IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02/07/2004

Coram

The Honourable Mr. Justice T.V. MASILAMANI

S.A. No.1540 of 1997
and S.A No. 1541 of 1997 and C.R.P.No.2919 of 1997

1. Abbubacker (died)
2. Abdul Hameed
3. Sedu Pathu Ammal
4. Peer Mohideen
5. Asian Beevi
6. Jeenath Sarifa
7. Pathumuthu
8. Noorjahan .. Appellants in the

[Appellants/petitioners 3 to 8 have been brought on
above S.As./
record as L/Rs. of the deceased 1st appellant (vide)
Petitioners in C.R.P
C.M.P.Nos.10627 to 10629 of 2002 dt. 24.7.03 and
CMP Nos.10633 to 10635 of 2002 dt. 25.2.04 respectively]

-Vs-

S.Sheik Manzur .. Respondent in the
above S.As./C.R.P.

Second Appeals against the judgments and decrees dated 9.9.1996 made in A.S.Nos.118 of 1995 and 125 of 1995 on the file of the II Additional District Judge, Tirunelveli reversing the judgment and decree dated 21.12.1994 in O.S.No.1033 of 1993 dated 21.12.1994 on the file of the Principal District Munsif, Tirunelveli.

Civil Revision Petition is against the order dated 9.9.1996 in C.M. A.No.95 of 1995 on the file of the II Additional District Judge, Tirunelveli reversing the order dated 21.12.1994 in I.A.No.1910 of 1993 in O.S.No.1033 of 1983 on the file of the District Munsif, Tirunelveli.

!For Appellants : Mr.D.Lingeswaran

^For Respondents : Mr.K.Srinivasan

:COMMON JUDGMENT

The appellants and the respondents in the Second Appeals and the Revision petitioners and the respondents in the Civil Revision Petition were parties to the suit in O.S.No.1033 of 1983 on the file of the Principal District Munsif, Tirunelveli. Since the question involved and the parties to the proceedings in the Second Appeals as well as the Civil Revision Petition are one and the same, the Second Appeals and the Civil Revision Petition are disposed of by this common judgment.

2. The appellants in S.A.No.1540 and 1541 of 1997 are the defendants and the respondent is the plaintiff in the said suit. These Second Appeals have been preferred as against the judgments and decrees in appeals in A.S.Nos.118 and 125 of 1995 rendered by the II additional District Judge, Tirunelveli on 9.9.1996 reversing the judgment and decree made in the suit in O.S.No.1033 of 1983 by the Principal District Munsif, Tirunelveli dated 21.12.1994.

3. The Civil Revision Petition is filed by the defendants as against the fair and decretal orders passed by the II Additional District Judge, Tirunelveli in C.M.A. No.95 of 1995 dated 9.9.1996 which had been preferred as against the fair and decretal orders dated 21.12.1994 passed by the Principal District Munsif, Tirunelveli in I.A.No.1910 of 1983 in O.S.No.1033 of 1983. The parties to the proceedings may be referred to in this judgment as they were arrayed before the trial Court for the sake of convenience.

4. The plaintiff-durga filed the said suit for recovery of possession of the suit property and for arrears of rent in respect of the demised premises. The defendants resisted the suit on various grounds pleading inter alia that they are entitled to the protection under the Madras City Tenants Protection Act, 1921 (Tamil Nadu Act 3 of 1922) as amended under Amending Act (Tamil Nadu Act 2 of 1996).

5. On behalf of the plaintiff-durga, its Secretary, has been examined as P.W.1 and the documents under Exs.A-1 to A-12 have been marked. On the side of the defendants, the second defendant has been examined as D.W.1 and documents under Exs.B-1 to B-43 have been produced and marked. After analysing the evidence both oral and documentary adduced on either side and upon hearing the arguments of the counsel for both sides, the trial Court held that the defendants are entitled to the benefits under Tamil Nadu Act 3 of 1922 and therefore dismissed the suit and directed a separate enquiry in the application filed by the defendants under Section 9 of the said Act with reference to the area of the site required by them for the convenient enjoyment of the superstructure and also relegated the enquiry relating to mense profit in a separate proceedings under Order 20 Rule 12 of the Civil Procedure Code.

6. The plaintiff preferred the first appeals in A.S.No.125 of 1995 and C.M.A.No.95 of 1995 and the defendants preferred the first appeal in A.S.No.118 of 1995 before the first appellate Court questioning the judgment and decree and fair and decretal orders passed by the trial Court. The learned II Additional District Judge, Tirunelveli heard the arguments of both

sides and after perusing the records and also considering the provisions of the Amendment Act 2 of 1996 which came into force with effect from 11.1.1996 held that since the demised property belonged to the wakf, the tenants are not entitled to the benefits under the said Act and therefore, he allowed the appeals and decreed the suit as prayed for and also dismissed the application filed by the tenant under Section 9 of the said Act. Hence, the Second Appeals and the Civil Revision Petition have been filed by the defendants questioning the said judgments and decrees.

7. The learned counsel counsel for the plaintiff has argued at the outset that after the passing of the Madras City Tenant Protection (Amendment) Act, 1994 (Tamil Nadu Act 2 of 1996), the provisions of Act 3 of 1922 are not applicable in relation to the properties owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religions (vide) Clause (f) to sub-Section (3) of Section 1 of Act 3 of 1922 which was introduced by Tamil Nadu Act 2 of 1996 with effect from 11.1.1996.

8. The learned counsel has relied on the Full Bench decision of this Court in 2003 (2) C.T.C. 129 (SREEDHARAN NAIR, N. -vs- MOTTAIPATTI CHINNA PALLIVASAL MUSLIM JAMATH, VIRUDHUNAGAR) and 2002 (4) C.T.C. 2 34 (S.SHANMUGAVEL NADAR v. STATE OF TAMIL NADU) in support of the arguments advanced on behalf of the plaintiff. The Full Bench decision was rendered in pursuance of the decision given by the Honourable Supreme Court in a batch of Criminal Appeals (vide) 2002 (4) C.T.C. 234 referred supra.

9. In the decision 2003 (2) C.T.C. 129, the Full Bench of this Court referred in paragraphs 3 and 4 of the judgment the Apex Court decision in 2003 (4) C.T.C. 234 and observed as follows:-

"3. In fact we had an occasion to deal with this batch of cases earlier and we dismissed all the writ petitions by our judgment dated 30.8.2000 holding that since the judgment in Varadaraja Pillai's case, 1 972 (85) L.W. 760 was taken on appeal to the Supreme Court in C.A.No.187 and 273 of 1973 and the appeals having been dismissed by the Supreme Court by order dated 10.9.1986 the judgment in Varadaraja Pillai's case, 1972 (85) L.W. 760 got merged with the judgment of the Apex Court dated 10.9.1986 in C.A.No.187 and 273 of 1973 and on the ground of doctrine of merger, it is not open to us to reconsider the Apex Court judgment.
4. Some of the petitioners herein took the matter on appeal in C.A. No.2480 and 2481 of 2001 etc. The Apex Court by judgment dated 18.9.2 002 allowed the appeals and set aside the order of this Court dated 3 0.8.2000 and remanded the matter for fresh disposal by this Court. The Apex Court was of the view that its decision in VARADARAJA PILLAI's case will not attract the doctrine of merger, since the appeals 187 and 273 of 1973 were dismissed on the technical ground without any law being laid. Hence the batch of cases is taken up for final disposal."

10. The ratio laid down by the Supreme Court in paras 19 and 20 in the decision 2002 (4) C.T.C. 234 (cited supra) while allowing the appeals

reads as follows:-

"Under Article 141 of the Constitution, it is the law declared by the Supreme Court, which is binding on all Courts within the territory of India. Inasmuch as no law was declared by this Court, the Full Bench was not precluded from going into the question of law arising for decision before it and in that context entering into and examining the correctness or otherwise of the law stated by the Division Bench in M.VARADARAJA PILLAI's case and either affirming or overruling the view of law taken therein leaving the operative part untouched so as to remain binding on the parties thereto. Inasmuch as in the impugned judgment, the Full Bench has not adjudicated upon the issues arising for decision before it, we do not deem it proper to enter into the merits of the controversy for the first time in exercise of the jurisdiction of this Court under Article 136 of the Constitution. We must have the benefit of the opinion of the Full Bench of the High Court as to the vires of the State legislation involved."

11. Thus the Full Bench of the Court rendered the decision on merits in 2003 (2) C.T.C. 129 upholding the constitutional validity of Act 2 of 1996. However, it is observed in the said judgment that the proviso to Section 3 of the amending Act makes it clear that nothing contained in the said Act shall be deemed to affect any suit, any decree or order passed and executed or satisfied in full before the said date.

12. In view of such statement of law referred to above enunciated by both the Full Bench of this Court and the Apex Court, it is unnecessary to reiterate that the applicability of the amending Act 2 of 1996 under clause (f) to sub-Section (3) to Section (1) of the Tamil Nadu Act 3 of 1922 cannot be questioned in this case as both the Courts below held that the demised property belonged to the plaintiff, muslim religious institution.

13. The said provision of law reads as follows:-
"This Act shall apply:-
(a) in the areas in which this Act is in force on the date of publication of the Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette, only to tenancies of land created before that date; and
(b) in any other area, only to tenancies of land created before the date with effect from which this Act is extended to such area by notification under Clause (b) of sub-section (2):
Notes:- Sub-section (3) substituted by Tamil Nadu Act 2 of 1980.
Provided that nothing contained in this Act shall apply to tenancies of land owned:-
(a) .. ..
(b) .. ..
(c) .. ..
(d) .. ..
(e) .. ..
(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.
Explanation:- For the purpose of this clause:-

(A) "religious institution" means any--
(i) temple;
(ii) math;
(iii) mosque;
(iv) church;
(v) other place whatever name known;
which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship.
(B) "religious charity" means a public charity associated with a religious festival or observance of religious character (including wakf associated with a religious festival observance of religious character), whether it be connected with any religious institution or not.
Notes:- Clause (f) inserted by Tamil Nadu Act 2 of 1996 with effect from 11.1.1996."

14. Therefore, it is abundantly clear that the provision of Tamil Nadu Act 3 of 1922 as amended by Act 2 of 1996 exempted the tenancy in this case with reference to the suit property which admittedly belongs to a muslim religious institution. Hence no vested rights are conferred on the tenant to claim compensation and purchase the site either under Section 3 or under Section of Tamil Nadu Act 3 of 1922. For the reasons stated above, this Court is of the considered view that the judgments and decree as well as the decretal order rendered by the first appellate court have to be confirmed.

15. Thus the Second Appeals as well as the Civil Revision Petition are dismissed. However, there will be no order as to costs.

Index: Yes
Website: Yes

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To
1. The II Additional District Judge, Tirunelveli.
2. The District Munsif, Tirunelveli.
3. The Section Officer, V.R.Section, High Court, Madras.

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